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10/544,215

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Thomas Magyar

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/544,215
Filing Date: July 29, 2005
Appellant(s): MAGYAR ET AL.

James E. Howard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on April 6, 2009 appealing from the Office action mailed Oct. 31, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on Jun. 30, 2008 has been entered.

In view of the Notification of Non-compliance dated Jan. 13, 2009, appellant corrected the deficiency regarding claim 28 in the Amended Appeal Brief dated Apr. 6, 2009.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,144,718 Ozawa 9-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ozawa (5,144,718). Note that process of a product made in the product claim (e.g. extruded, injection molded, scoring) is given no patentable weight.

(10) Response to Argument

Applicant's first argument is solely based on that Ozawa '718 does not teach or disclose a door handle for mounting on a refrigeration furniture door. Agreeably, '718 in fact does not specifically point out that whether the door handle is intended to be mounted on a refrigeration furniture door. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 1647 (1987).

In this case, as to independent claims 14, 25, and 29, Ozawa '718 shows every element as claimed, including a middle piece (7), two end pieces (8, 9) with receiving

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elements (cavities of two opposite ends of the middle piece 7), two plug members (each formed by element 20 and 18, respectively inserted into the cavities of the middle piece 7), and the receiving elements having continuous peripheral walls over their entire length (see figure 1, middle piece 7 having a continuous cross-section) and the refrigeration furniture door is claimed as intended use for the claimed handle.

As to claim 15, the middle piece of '718 is straight profile.

As to claims 16 and 17, the process of a part being made by "injection molded" or "extruded" is given no patentable weight.

As to claim 18, each plug element of '718 is complementary to the receiving element, geometrically.

As to claim 19, each plug element of '718 is inserted into the receiving element in a direction parallel to the axis of the middle piece.

As to claim 20, '718 has a base (18) surrounded by a circumferential projection (20, 21).

As to claim 21, '718 show a score (cut 19) to allow the projections 21 to create friction to frictionally locking the plug to the receiving element. Note that "scoring", the way of forming the cut, is given no patentable weight.

As to claim 22, '718 shows the outer contour of the middle piece continues continuously into the end piece to form an integral handle without interruption (see figures 2 and 5).

As to claim 23, '718 has a retaining toggle (31) for form-locking connection to the door.

As to claim 24, '718 has at least one through hole formed in the end piece for inserting a fixing means (screw 23, see figures 2 and 5.)

As to claim 26, the claim has similar limitations contained in claims 17 and 18. There is no need to reiterate the explanation. Please see comments regarding claims 17 and 18 above.

Similarly, as to claim 27, see comments regarding claim 23 above.

As to claim 28, see comments regarding claim 24 above.

As to claim 30, see comments regarding claims 17 and 18 above.

As to claim 31, see comments regarding claim 23 above.

As to claim 32, see comments regarding claim 24 above.

From the explanation shown above, it is apparent that Ozawa '718 meets every limitation as claimed.

Further, applicant's second argument is based on that the handle of Ozawa '718 is a much more complex arrangement than the elements recited in Appellants' claims. Thus Ozawa does not teach or disclose the door handle recited in claims 14, 25 and 29. The examiner does not agree. It must be note that Ozawa '718 simply discloses the invention as claimed. The argument, relied upon the fact that the prior art is more complex than the claimed invention, is irrelevant.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Chuck Mah/

Primary Examiner, Art Unit 3677

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